

Federal Acquisition Regulation

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directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be forwarded to the district office servicing the geographical area in which the contracting office is located.

(c) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is located. All requirements for 8(a) construction competition should be forwarded to the district office servicing the geographical area in which all or the major portion of the construction is to be performed. All requirements, including construction, must be synopsisized through the GPE. For construction, the synopsis must include the geographical area of the competition set forth in the SBA's acceptance letter.

[54 FR 46005, Oct. 31, 1989, as amended at 61 FR 67421, Dec. 20, 1996; 62 FR 44823, Aug. 22, 1997; 64 FR 32744, June 17, 1999; 65 FR 46057, July 26, 2000; 66 FR 27413, May 16, 2001]

19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within 2 days of receipt if the contract is at or below the simplified acquisition threshold. The contracting agency may grant an extension of these time periods. If SBA does not respond to an offering letter within 10 days, the contracting activity may seek SBA's acceptance through the Associate Administrator (AA)/8(a)BD.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

(c) For acquisitions not exceeding the simplified acquisition threshold, when the contracting activity makes an offer to the 8(a) Program on behalf of a specific 8(a) firm and does not receive a

reply to its offer within 2 days, the contracting activity may assume the offer is accepted and proceed with award of an 8(a) contract.

(d) As part of the acceptance process, SBA will review the appropriateness of the NAICS code designation assigned to the requirement by the contracting activity.

(1) SBA will not challenge the NAICS code assigned to the requirement by the contracting activity if it is reasonable, even though other NAICS codes may also be reasonable.

(2) If SBA and the contracting activity are unable to agree on a NAICS code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) Program, appeal the contracting officer's determination to the head of the agency pursuant to 19.810, or appeal the NAICS code designation to the SBA Office of Hearings and Appeals under subpart C of 13 CFR part 134.

[48 FR 42240, Sept. 19, 1983, as amended at 56 FR 55380, Oct. 25, 1991; 61 FR 67421, Dec. 20, 1996; 64 FR 32744, June 17, 1999; 65 FR 46057, July 26, 2000]

19.804-4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances. This allows the SBA to determine—

(a) Whether the requirement should be a competitive 8(a) award;

(b) A nominated firm's eligibility, whether or not it is the same firm that performed the previous contract;

(c) The effect that contract award would have on the equitable distribution of 8(a) contracts; and

(d) Whether the requirement should continue under the 8(a) Program.

10. Add sections 19.804-5 and 19.804-6 to read as follows:

[64 FR 32744, June 17, 1999]

19.804-5 Basic ordering agreements.

(a) The contracting activity must offer, and SBA must accept, each order under a basic ordering agreement (BOA) in addition to offering and accepting the BOA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of

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orders issued under a specific BOA to exceed the competitive threshold amount in 19.805-1.

(c) Once an 8(a) concern's program term expires, the concern otherwise exits the 8(a) Program, or becomes other than small for the NAICS code assigned under the BOA, SBA will not accept new orders for the concern.

[64 FR 32744, June 17, 1999, as amended at 65 FR 46057, July 26, 2000]

19.804-6 Multiple award and Federal Supply Schedule contracts.

(a) Separate offers and acceptances must not be made for individual orders under multiple award or Federal Supply Schedule (FSS) contracts. SBA's acceptance of the original multiple award or FSS contract is valid for the term of the contract.

(b) The requirements of 19.805-1 do not apply to individual orders that exceed the competitive threshold as long as the original contract was competed.

(c) An 8(a) concern may continue to accept new orders under a multiple award or FSS contract even after a concern's program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the NAICS code assigned under the contract.

[64 FR 32744, June 17, 1999, as amended at 65 FR 46057, July 26, 2000]

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) Program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and

(2) The anticipated total value of the contract, including options, will exceed \$5,000,000 for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$3,000,000 for all other acquisitions.

(b) Where an acquisition exceeds the competitive threshold, the SBA may

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accept the requirement for a sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation.

(c) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm.

(d) The SBA Associate Administrator for 8(a) Business Development (AA/8(a)BD) may approve an agency request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a request to compete below the threshold will be approved, the AA/8(a)BD will, in part, consider the extent to which the requesting agency is supporting the 8(a) Program on a noncompetitive basis. The agency may include recommendations for competition below the threshold in the offering letter or by separate correspondence to the AA/8(a)BD.

[54 FR 46005, Oct. 31, 1989, as amended at 61 FR 67421, Dec. 20, 1996; 64 FR 32744, June 17, 1999; 65 FR 46056, July 26, 2000]

19.805-2 Procedures.

(a) Offers shall be solicited from those sources identified in accordance with 19.804-3.

(b) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.

(1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (i.e., first low, second low, etc.) with the total evaluated price for each offer,